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LEGAL WORK STATUS OF PUBLIC SCHOOL CLASSIFIED EMPLOYEES IN THE FIFTY STATES. FINAL REPORT.

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CLASSIFIED PERSONNEL OF A SCHOOL DISTRICT REPRESENT BETWEEN 25 AND 30 PER CENT OF THE ENTIRE SCHOOL STAFF. THE PURPOSE OF THIS STUDY IS TO DETERMINE THE LEGAL WORK STATUS OF CLASSIFIED EMPLOYEES IN THE PUBLIC SCHOOLS THROUGHOUT THE 50 STATES AND TO ARRANGE THE COLLECTED INFORMATION UNDER FUNCTIONAL TOPICS. THE PROBLEM IS SUBDIVIDED TO CONSIDER (1) COLLECTIVE BARGAINING, (2) DISCRIMINATION, STRIKES, AND OTHER EMPLOYMENT PRACTICES, AND (3) FRINGE BENEFITS. THE RESEARCH PROCEDURES FOLLOWED IN THE PREPARATION OF THE STUDY CONCENTRATE ON A SYSTEMATIC HISTORICAL SEARCH OF LEGAL DOCUMENTS. THE PRINCIPAL SOURCES OF DATA ARE STATUTES OF THE VARIOUS STATES, CONSTITUTIONS OF THE STATES, AND CASE LAW FROM COURTS OF RECORD AT BOTH THE STATE AND FEDERAL LEVELS. THE FINDINGS AND CONCLUSIONS RELATED TO THE LEGAL WORK STATUS OF PUBLIC SCHOOL CLASSIFIED PERSONNEL ARE REPORTED CATEGORICALLY UNDER EACH OF FOUR HEADINGS--THE HISTORICAL-LEGAL DEVELOPMENT OF THE WORK STATUS OF PUBLIC SCHOOL CLASSIFIED EMPLOYEES, THE LEGAL WORK STATUS REVEALED IN THE STATE CONSTITUTIONS, THE LEGAL WORK STATUS REVEALED IN THE STATE STATUTES, AND THE LEGAL WORK STATUS REVEALED IN THE DECISIONS OF THE COURTS. (HW)

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James D. Pruitt

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The research reported herein was performed pursuant to a contract with the Office of Education, U.S. Department of Health, Education, and Welfare. Contractors undertaking such projects under Government sponsorship are encouraged to express freely their professional judgment in the conduct of the project. Points of view or opinions stated do not, therefore, necessarily represent official Office of Education position or policy.

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BACKGROUND

Questions of legal work status are questions of law, and the legal literature applicable to public schools in the United States has traditionally been concerned with the law as it applied to administrators, teachers, and pupils. The data on non-teaching personnel are virtually non-existent. Also, there is little work extant describing the legal work rights of public school classified personnel; however these people are becoming an increasingly large force in the American public school system, and in a time in which labor is seeking new vistas in which to involve itself, this area of the labor force presents an increasingly valuable goal for the unions. The labor unions, and in many cases the workers themselves, recognize that the work rights which have been enjoyed by labor unions in the private sector of the economy are attractive goals to be attained by workers in the public sector, and while the legal work status of these employees has been neglected in the past, those work rights will assume a growing importance in the years ahead.

In 1962, Arthur L. Newell, in a speech before the annual convention of the Association of School Business Officials of the United States and Canada, indicated that the classified personnel of a school district represented between twenty-five and thirty percent of the entire school staff. It was thus possible to estimate on the basis of published data of the total employed classified personnel that these employees currently number in excess of 430,000 persons.

The rights of these workers under the laws of the various states and under the federal constitution were not defined as a single class of

workers. Thus, laws pertaining to public school classified employees has never been collected in a single volume heretofore.

OBJECTIVES

The purpose of this study was to determine the legal work status of classified employees in the public schools throughout the fifty states. Furthermore, it was a purpose of the study to arrange the collected information under functional topics for use by persons interested in the problem, including school administrators, members of school boards, public school classified personnel, government and labor union officials, and others.

Desired outcomes were to show the status of classified personnel management throughout the fifty states and to explain under general and topical headings the respective rights and duties of public school classified personnel, administrators, school board members, and various state and local agencies relative to the work status of these public school classified personnel.

The problem was subdivided into areas of concern which included (1) collective bargaining; (2) discrimination, strikes, and other employment practices; and (3) fringe benefits including workmen's compensation, minimum wage and maximum hour laws, retirement provisions, seniority and grievance regulations and other work rights and responsibilities.

PROCEDURE

Research procedures followed in the preparation of this study concentrated on a systematic historical search of legal documents. The principal sources of data used in this study were statutes of the

various states, constitutions of the states, and case law from courts of record at both the state and federal levels. The case law data was organized around topics suggested by secondary source materials found through a review of the educational and labor law literature which contained references to or topics on school or labor law in general and to the legal work status of public school classified personnel in particular. The information thus collected was arranged into separate collections of constitutional, statutory, and case law references.

The constitutional references were reported according to state. The data was recorded in a note system which permitted subsequent analysis and reorganization. A similiar procedural collection, recording, analysis, and systemetization of statutory aspects of the study was pursued. Through the use of legal index materials, cases found through the reading of the secondary sources were located and briefed, and citations to other cases were recorded when it was felt they might have a bearing on some aspect of the study.

Certain legal terms were located and their meanings determined through legal dictionaries and word finders.

Statutes and cases were Shepardized for analysis in the final report of the research. In the final report of the research the constitutional, statutory, and case law references were organized according to the above mentioned plan, and reported accordingly. The entire work was submitted to a consultant versed in the law for his suggestions and approval.

Significant principles of law which came to light during the course of the investigation were summarized and conclusions based upon those findings were reported in the final research report.

REVIEW OF LITERATURE

The earliest type of educational literature in which problems of school law were treated was the textbook. Textbooks were of two types: one for the practicing school administrator and the other for use as a reference tool by students of school law. The earliest textbooks were general in nature, with the subject matter being limited to summary presentations of general law surrounding the organization and existance of the public schools. As the literature progressed into the last quarter of the nineteenth century the treatment of school law became more specific and more sectionalized. At this time textbooks began to present concrete common law principles which applied to individual topics of school law. The earliest textbooks on school law were published during the last quarter of the nineteenth century.

After the turn of the century publications in the field of school law increased measurably. Trusler, writing in 1927, makes only one reference to non-certificated personnel, when he cites the case of a janitor who was liable for the injury of a pupil, due to the janitor's negligence. The citation was based on case law rather than statutes. As late as 1955 no mention was made of the rights of classified personnel in conjunction with a consideration of the constitutional rights of other interested school parties, such as teachers, students, parents, and school authorities.

Many publications in the field of school law began as doctoral dissertations and treated special aspects of school law. Some of these aspects included general rules of tort liability in relation to the legal authority of teachers and school officers. Another aspect of school law was the constitutional and statutory basis upon which public schools are based. Other topics included tort liability, school

attendance, transportation, discipline, and school board policies. Many texts documented these topics with citations to court cases, thus showing the weight of authority for the points of law covered.

In 1953 Remmlein wrote a parallel discussion of selected legal aspects of professional and non-certificated work rights. The topics she covered included employment and dismissal, salaries, restrictions on political activities, loyalty oaths, sick leave and workmen's compensation coverage, retirement, social security coverage, and collective bargaining agreements. Her treatment was the fullest one given to public school classified employees in the school law literature. Remmlein found that some laws applied to all school personnel, regardless of whether they were certificated or non-certificated, while others applied only to certificated or to non-certificated personnel. Furthermore, slight overlapping existed in some states. For example, school secretaries were included in two or three tenure laws. Some or all of the clerical and/or custodial staff were included in some teacher retirement laws. She concluded, therefore, that the law pertaining to non-certificated employees was included with that pertaining to professional personnel in some instances and appeared separately for only classified employees in other instances.

Books on school law appeared in many forms. Most books, while discussing the legal work status of public school personnel, failed to make distinction between professional and non-professional personnel, thus rendering them only minimally useful for this study. Hamilton and Reutter (1958) found that while there was a trend toward the circumscription of local school board powers through the enactment of minimum standards and permissive legislation, local boards were still vested with broad discretionary powers. Earlier Schroeder (1928) had

established that the local public schools are legally political subdivisions of the state, and as creatures of the legislature, were responsible to them and derived their authority from the legislature. Since 1953 no research had been conducted which dealt specifically with documented evidence of the legal work status of non-professional employees of the public schools.

The National Education Association had probably done more research in the field of school la[redacted] any other single organization. It had published numerous research bulletins, pamphlets, reports, and monographs. Most of the National Education Association research division publications were aimed at informing the classroom teacher about his rights and liabilities under the law. The United States Office of Education has published bulletins for the last half century on various aspects of personnel administration and school law. Many of these were statistical in nature and attempted to correlate differences and likenesses among the state statutes, constitutions, and court decisions. Neither the publications of the National Education Association or the United States Office of Education were devoted to documented studies of the legal work status of public school classified employees, however. Likewise, most dissertations and articles appearing in professional journals were concerned with aspects of school law other than those related to legal work rights of non-certificated personnel. Therefore, it became necessary to utilize primary sources almost exclusively for the basis of this study.

The basic research for this study was conducted in legal literature. There were two types of legal references: books of index and books of law. The books of law contained the actual body of data. The

books of index classified, arranged, indexed, labeled and/or defined that law so that various parts of it could be found. The books of index were used as a means of searching out data on a topical basis for orienting the researcher's thinking, organizing the study, and providing leads to pertinent material in the books of law. Books of index included encyclopedias, textbooks, indices to legal periodicals, legal dictionaries, digests, tables, annotations, and citation books. Corpus juris secundum and the earlier corpus juris were multi-volume encyclopedias of case law principles, supported with footnotes citing cases which proved the particular legal principles under discussion. Pollack, Rezny and Remmlein, Natz, and Roalfe all produced works on the conduct of legal research.

There were two types of books of law: those containing statutes and those containing decisions. Statute books contained constitutions, state statutes, municipal ordinances, rules of administrative bodies, rules of court, and executive orders and promulgations. The federal constitution was found in the United States Code. It was used for reference purposes, and the authority granted to the states by the Tenth Amendment to the Constitution, that the powers not delegated to the federal government nor prohibited by it to the states were reserved either to the states or the people individually, was regarded as a foundation upon which further legal procedures at both the federal and state level were based. When reference to federal statutes was necessary, the United States Code and the United States Code Annotated were consulted.

Court decisions on cases were found in the United States Supreme Court Reports, the National Reporter System, selected or annotated

reports, and occasional decisions of administrative bodies. The National Reporter System reported all cases occurring in all courts of record in every state. The system was divided into nine geographical parts, plus separate series for the Supreme Court and other federal courts.

FINDINGS

This section presents a summary of the data derived from a search of the legal sources of this study. The findings and conclusions related to the legal work status of public school classified personnel were reported categorically under each of four headings: the historical-legal development of the work status of public school classified employees; the legal work status revealed in the state constitutions; the legal work status revealed in the state statutes; and the legal work status revealed in the decisions of the courts.

Historical-Legal Development of the Work Status of Public School Classified Employees. The historical-legal landmarks which contributed to a broader understanding of the legal work status of the public school classified employees in the fifty states were reported herein.

1. Findings - (a) The books and periodicals in educational literature containing information concerning the legal work status of public school classified employees were found to be limited. There was no lack of material concerning the history of the labor movement in the United States. Nor was there any dearth of information on the subject of labor-management relations in general. However, neither of these sources provided specific information on the subject of this study.

(b) The earliest type of educational literature in which problems of school law were treated was the textbook. Textbooks were found to be of two types: one for the practicing school administrator and the other for use as a reference tool by students of school law. The earliest textbooks were general in nature, with the subject matter being limited to summary presentations of general law concerning the organization and existence of the public schools. These works were primarily concerned with the establishment of a legal and constitutional basis for the existence of the public schools, not with specific problems of the legalities of school administration or personnel management. As the literature progressed into the last quarter of the nineteenth century treatment of school law became more specific and more sectionalized. At this time textbooks began to present concrete common law principles, documented by references to statutes and court cases, and applying to individual topics of school law. The earliest textbooks on school law were published during the last quarter of the nineteenth century. After the turn of the century publications in the field of school law increased measurably.

(c) One of the earliest specific examples of the treatment of a legal work right involving a public school classified employee occurred in a 1927 textbook (Trusler) noted for its scope and detail. This case involved the tort liability of a school janitor and was the only case pertaining to the legal work status of school classified employees in the entire work. This single citation proved to be typical of other literature. References to public school classified personnel were generally limited to a single sentence or, at most, a single paragraph in an entire work on school law.

(d) The trend toward books applying the law to specialized aspects of school operations did not emerge until the 1940's and did not gain much following until the 1950's. Earlier texts incorporated brief passages concerning the legal work status of public school classified personnel in books which were primarily devoted to other subjects. Among the topics concerning the legal work status of public school classified employees treated by these texts were labor union organization, civil service classification, and the place of public school classified employees in the hierarchy of government employees.

(e) Within the past eight years, several authors (Gauerke, 1959; Seitz, 1961; and Steinhilber and Sokolowski, 1966) devoted an entire chapter of a book on selected aspects of school law to a discussion of the legal work status of public school classified personnel. During the 1950's and 1960's there occurred a marked increase in textbooks on school administration which dealt, at least tangentially, with the administration of classified public school personnel. During this period several full-scale treatments of the administration of public school personnel appeared (Gibson and Hunt, 1965; Yeager, 1959; Van Zwoll, 1964; and Weber, 1954). These treatments were largely non-legal, however, and were concerned with the psychological factors involved in harmonious working relationships among members of the school staff, or in the human relations aspects of personnel management.

2. Conclusions - (a) The work status of public school classified personnel is a matter of growing concern to authorities in the field of school management. That this concern be expressed in legal language remains to be seen, however.

(b) The literature of public school administration and school law does not reflect the growing size and concomitant importance

of this segment of the work force. Nor does it contain an adequate discussion in legal terminology, documented with reference to current statutory and common law provisions, of the legal work status of public school classified employees.

(c) The legal position of the public school classified employees in the hierarchy of government employees is well settled. Ample evidence exists, and has been reported in the literature, to show that these employees are employees of a political subdivision of the state, and are therefore subject to the same provisions which apply generally to employees of the state or political subdivisions thereof.

(d) Employment in the public schools, by either professional or non-professional personnel, imposes special obligations upon these employees as representatives of government. These problems are generally recognized in the literature, but the treatment of them in the case of public school classified employees is generally quite limited.

(e) The authority of local school boards to formulate policies in certain areas was widely recognized. This authority extends to such areas as employment and dismissal, salaries, job descriptions, working conditions, and qualifications for promotion.

The Legal Work Status Revealed in the State Constitutions. An analysis of the state constitutions revealed that provisions related to public school classified employees could be categorized under two headings: namely, (1) general rights and liberties provisions and (2) specific educational provisions. The general rights and liberties provisions specify the powers and limitations of the state or its political subdivisions over all workers including those in education; the educational provisions outline the specific powers and limitations of institutions incorporated for educational purposes.

1. Findings - (a) The language of the constitutions themselves were not generally concerned with operational approaches to specific instances. Rather, constitutions of the fifty states were typically concerned with enunciating in general terms common rights applicable to all men in their work and in their lives at large. At the constitutional level it was difficult to separate the work rights of public school classified personnel from the individual rights of all working men or all citizens.

(b) Less than one-third of the states had constitutional provisions for civil service. Those states which did provide for civil service in their constitutions discussed such matters as compensation and grading, demotion, promotion, discrimination, tenure, definitions of persons included, termination of employment, qualifications for recruitment, job qualifications such as examinations, residence and citizenship requirements, and veterans' preference.

(c) Four-fifths of the states had constitutional provisions forbidding laws which impaired the obligation of contracts. This constitutional provision provides a basis for contractual security for public school classified employees.

(d) Virtually all fifty states' constitutions contained a provision calling for the establishment, support, and maintenance of a general, thorough, uniform, and efficient system of free common or public schools, or words to that effect. The constitutional basis for the establishment of public school systems is founded upon this constitutional provision and the tenth amendment to the United States Constitution.

(e) Many states had constitutional provisions pertaining to the definition of public schools, the financing of school systems,

employment and working conditions of public school employees, and the authority of certain school officials such as district and/or county superintendent.

(f) One-eighth of the states contained constitutional provisions concerning exemptions from jury duty. Usually, however, such provisions were found in the statutes of the various states.

(g) Virtually every state contained constitutional provisions regarding the basic freedoms of speech, writing, and publication. Likewise, every state contained some constitutional statement of fundamental principles of government or the purpose of government, or of the general or political rights of the people. Still other states phrased this right in terms of the relation of the state to the federal government, the right of the people to equality, freedom, and independence, or a statement of government as a social compact.

(h) A preponderance of states contained provisions pertaining to labor and working conditions. These provisions appeared in many forms. Ten states contained constitutional provisions dealing generally with the creation of a commissioner or a commission or a department of labor and industry, or agriculture and industry, or some variation of this, such as a bureau. These same provisions dealt to some extent with the power of the commission or commissioner and the method of appointment, as well as the technicalities of the administrative organization. Three states contained provisions for arbitration and conciliation of labor disputes. Three states prohibited the exchange of black lists. Two states contained provisions guaranteeing the individual freedom to obtain employment. Twelve states contained provisions relating to the employment of children. Four states contained provisions concerning collective bargaining. Seven states

contained constitutional provisions relating to the legality of contracts which waive the right of an employee to collect from his employer for an injury or death caused by conditions relating to his employment. Nine states contained general declarations of the rights of labor, including the right to just protection through laws calculated to promote the industrial welfare of the state. Eight states contained provisions pertaining to the health and safety of employees. Four states contained provisions concerning maximum hours of employment. Five states contained provisions relating to minimum wages for employees. Two states had provisions concerning the general employment of workers in public work. Three states had constitutional provisions prohibiting aliens from government employment. Provisions discussing exemptions from jury duty were found in the constitutions of six states. Nine states had constitutional provisions concerning hours of employment on public work. The constitutions of five states contained provisions concerning the right to work. Minimum wages for women are discussed in the constitutions of seven states.

(i) Libel and slander provisions are contained in the constitutions of three-fourths of the states. The rights of citizens to life, liberty, and property, or prohibitions against the deprivation of those rights, are found in the constitutions of fifty states.

(j) The power to frame municipal home rule charters is conferred by the constitutions of over half the states. The provisions of the various states covering the general nature of the power to frame local charters in no case provided specifically for the inclusion of schools or school districts. However, in many cases the provision is for a charter for the government of the municipal area consistent

with and subject to the constitution and laws of the legislature and of the state.

(k) Women are guaranteed equal rights under the constitutions of five states.

(l) A guarantee of religious freedom or a prohibition against a discrimination on the basis of religion is found in the constitution of every state.

(m) The constitutions of twelve states contained provisions concerning workman's compensation.

(n) Six states had constitutional provisions concerning pensions and retirement for state employees. One state, to the contrary, stipulated that a general pension system was not to be established.

(o) The constitutional provisions of all states contained various wordings. The summary presented above depended upon regularizing the wording of the various constitutional provisions.

A total of forty-six categories were contained in the constitutions of the fifty states pertaining to rights and liberties provisions of workers in general and public school classified employees in particular.

(p) Constitutional provisions of the fifty states relating to public education were generally confined to statements of public policy in support of public education or establishment of administrative authority in the public schools. These two provisions were found to be common to virtually all fifty states.

2. Conclusions - (a) It was not in the nature of state constitutions to deal specifically with the legal work status of public school classified employees. What few direct references there were to

aspects of this study were found to apply usually to retirement benefits or job discrimination.

(b) Anti-discrimination provisions were not given a thorough treatment in the constitutions of the fifty states. However, this oversight has been corrected by the passage of an anti-discrimination bill by the United States Congress. This anti-discrimination bill applies to employees in the public sector, as well as employees in private industry.

(c) The state constitutions formed the legal framework upon which the statutory laws of the various states were developed. The provisions of state constitutional law were controlling whenever a conflict arose between the state constitutional law and statutory law.

(d) Because public school classified employees were not considered as a separate group under the constitution provisions of the fifty states, they were as adequately represented under the law as any other group of workers or citizens in general. Thus, the legal work status of public school classified employees, while not specifically enunciated, were adequately covered in a general sense.

(e) Some constitutional provisions were contradicted by the facts. For instance, one state's constitution appeared to include public school classified employees under the provisions for civil service, yet in fact these personnel in that state were not covered under a merit system.

The Legal Work Status Revealed in the State Statutes. The legal work status of public school classified personnel as revealed in the state statutes was subject to change by legislative enactment, in as much as the legislature had the power to amend, repeal, or initiate new

statutory acts when it deemed such acts necessary. Therefore, more frequent change in such matters was noted in the states' statutes than in the constitution.

1. Findings - (a) State statutory provisions were divided into twenty-one specific categories with one additional category for occasional statutory provisions. These categories were arbitrarily chosen to reflect the classification of work rights and responsibilities described under "Procedure" above.

(b) Forty per cent of the states had provisions which related to the right to work.

(c) Union membership provisions relating to these employees occurred in over eighty per cent of the states. No clear trend either toward inclusion or exclusion of these employees under the law was evident.

(d) Health examinations and health status was a condition of initial or continued employment in less than forty per cent of the states.

(e) Two-thirds of the states' statutes contained provisions relating to jury duty for these employees. In about ten per cent of the states school classified employees were excused from jury duty if their absence from work was detrimental to the public good. In most cases, however, exemptions from jury duty did not include these personnel.

(f) In over forty per cent of the states there were statutory provisions relating to the right to strike. In a preponderance of cases the right was denied public school classified employees.

(g) Virtually every state specifically included these personnel in the provisions for federal social security (Old Age and Survivors Insurance).

(h) Definitions under Workmen's Compensation provisions concerned public school classified employees in virtually every state. In the great majority of states these employees were included.

(i) Every state's statutes contained provisions relating to child labor. No state included public school classified employees by name in those provisions, but these statutes were instrumental in limiting the circumstances of employment for public school classified employees.

(j) Twenty per cent of the states referred to public school classified employees in their teachers' retirement provisions. Less than ten per cent of the states included these personnel in the teachers' retirement system, however.

(k) Those states which did not include public school classified employees in teachers' retirement systems made other provisions for retirement, so that in all fifty states these employees were included in some retirement plan.

(l) Virtually all states had provisions for the administration of pertinent labor legislation through a state agency specifically established for that purpose.

(m) Almost eighty-five per cent of the states had provided for the participation by public school classified employees in some form of group insurance. The types of insurance and the conditions of participation varied widely. Types of insurance included life, health, accident, hospitalization, and disability; and conditions of

participation ranged from mandatory for both employer and employees to elective for both.

(n) Provisions for military leaves of absence with a guarantee of the same or a similar job upon return included public school classified employees in more than eighty per cent of the states.

(o) Specified payroll deductions applicable to public school classified employees were allowed by the statutes of over forty-five per cent of the states. The most frequently mentioned deductions were for union dues (the right of check off), United States savings bonds, group insurance, and United Fund contributions.

(p) Virtually every state had statutory provisions pertaining to minimum wages and maximum hours, but most states excluded public school classified employees from these provisions.

(q) About two-thirds of the states included public school classified employees in their provisions concerning collective bargaining, but there was no clear trend as to the inclusion or exclusion of these personnel under those provisions.

(r) Statutory provisions prohibiting discrimination in employment were found in virtually every state. The usual restrictions were on the basis of race, creed, color, national origin, or ancestry. In any event, these provisions were supported by federal anti-discrimination legislation which included employees in the public sector.

(s) Twenty per cent of the states had statutes concerning school district organization which included references to the legal basis for the employment of public school classified employees.

(t) Nearly eighty-five per cent of the states had provisions for a merit system of employment for selected state personnel.

As a rule these provisions were found inapplicable to public school classified employees.

(u) Two-thirds of the states had specific statutory provisions for school bus drivers. The provisions ranged from special licensing requirements to tenure provisions in the case of one state.

(v) Almost fifteen per cent of the states provided in their statutes for specified pay periods for public school classified employees. The usual period was every two weeks.

(w) Miscellaneous provisions (defined as occurring in ten per cent or less of the states) were found to include such items as (1) nepotism, (2) employment of fascists, nazis, and communists, (3) loyalty oaths, (4) sick leave, and (5) deduction of back taxes from pay checks.

(x) All provisions alluded either directly or indirectly to public school classified employees. The terminology varied. In some instances reference was made to specific job categories such as janitors or clerks; in other instances the language of the statutes referred to employees of the public schools or of political subdivisions of the state. No references were found in the statutes to public school classified personnel <u>per se</u>.

(y) Some references were inclusive; others were exclusive. For example, while nearly every state included public school classified employees in provisions for workmen's compensation, a small minority of states excluded those workers from that protection. No provision was either entirely inclusive or entirely exclusive. Furthermore, there was no unanimity among the states as to any single category in the study. That is, no topic was covered by all fifty states.

2. Conclusions - (a) The fact that the language of the statutes varied from state to state within the same category, even when the sense of the statutes was essentially the same, was indicative of the casual manner in which the legal work status of public school classified employees was treated.

(b) Another indication of the lack of legal interest in public school classified employees as a single group was the dispersion of statutory provisions pertaining to these personnel throughout the entire body of a state's collected statutes. In point of fact, few provisions for these employees were found under the education codes of the various states.

(c) An interest in organized labor was greater in industrialized states. In general, the larger, wealthier, more populous states evidenced greater interest in workers in general, and public school classified employees in particular, than their smaller, poorer, less populous sister states.

(d) As a general rule, if a state evidenced considerable statutory interest in the rights of public school classified employees as expressed in labor relations legislation, there was relatively little mention of these employees in the civil service provisions of that same state, and the converse was also true. Very few states, if any, dealt extensively with the work rights of these employees under both statutory provisions pertaining to labor-management relations and civil service provisions.

(e) The ambiguity of many statutory provisions concerning the legal work status of public school classified employees indicated that these personnel were the forgotten men in public schools, i.e., government, service.

The Legal Work Status Revealed in the Decisions of the Courts. The principles of common law relating to the legal work status of public school classified employees were classified under six main areas. These categories were (1) status and authority, (2) contracts and salary, (3) workmen's compensation, (4) labor relations, (5) tort liability, and (6) retirement.

1. Findings - (a) The major portion of the litigated cases involving public school classified employees was in the area of contracts and salary. In this regard, the courts found the following principles to hold true:

a. School districts are immune from tort liability for discharging an employee when the discharge is based upon a breach of decorum.

b. School boards may suspend an employee without pay pending the outcome of charges filed against that employee by the board or other school authorities.

c. School boards are not obliged to hire highest-scoring candidate on a civil service examination when the law permits the hiring of any of the three high-scoring candidates.

d. The alleged misrepresentation of information supplied on an employment questionnaire to conceal questionable activities of the applicant does not invalidate the contract so long as the information supplied is merely vague or general and not, in fact, a literal misrepresentation.

e. It is sufficient to comply with the law requiring the naming of a specific time and place of an on-the-job injury if the employee's injury was of a gradual and progressive nature and if he

can show that the injury was a direct result of his employment duties.

f. A salary increment resulting from a reclassification of civil service status does not necessarily entitle an employee to a retroactive raise, even though the reclassification itself is retroactive. The employee is entitled only to an increment for which funds have actually been appropriated by the legislature.

g. A school board may discipline an employee on the same grounds as those upon which he has been acquitted in court if it is convinced that the evidence warrants disciplinary measures.

h. Even though a school be closed or a position be abolished, an employee whose job is eliminated by either action may collect the remainder of his contract's wages if his contract, either verbal or written, does not contain an express stipulation to the contrary.

i. A school board may abolish a civil service position, thereby causing an employee to lose his job, if the evidence justifies the abolition of the position.

j. Certain classified employees were held in one case to come within the tenure law, and were thus reinstated to positions from which they had been dismissed for reasons of economy and efficiency.

2. Conclusions - (a) On the basis of the above cases, the following conclusions appear to be warranted:

a. In questions involving civil service status, the courts may hold that the practicalities of the issue override any principles at issue and that while dismissal of an employee without cause is illegal, the justifiable abolition of the office itself may legally involve the dismissal of an employee.

b. Hiring and dismissal practices and procedures of school boards are generally immune from legal action so long as they are within the limits of the powers of the board and so long as they do not violate any constitutional guarantees.

c. The broadest possible interpretation must be put upon the tenure law in its relationship to public school classified employees.

d. Employees are entitled to reasonable job security, or if that security is withdrawn, compensation unless their contract specifically provides otherwise.

3. Findings - (b) A second major area of common law concern was status and authority of public school classified employees and their employers. The courts adhered to the following concepts:

a. An employee may not be eligible for workmen's compensation if the school district is not considered a political subdivision of the state within the meaning of that term as found in the definitions under either the workmen's compensation law of the state or the laws establishing and defining the relationship of the school district to other governmental units.

b. An employee may be hired by a principal to perform duties in the principal's building if it can be established that the principal was acting as an agent of the school board. Even though no other authorities were involved in the employment, the employee is eligible for reimbursement from school funds, as well as other benefits accruing to any other regular employee of the school district.

c. School employees may not be considered employees of the state for purposes of inclusion under the federal social security laws, according to the common law test applied to make that determination.

4. Conclusions - (b) On the basis of the above cases, the following conclusions appear to be warranted:

a. In workmen's compensation cases, the coverage of a public school classified employee may be determined not by the legal work status in which he finds himself but by the legal nature of the government unit which employs him, the school district.

b. The laws of a state regulating the classes of employees which may be considered state employees may differ in their definition of this term from other state laws which do not have to conform to federal requirements.

c. Under certain circumstances employment by the school board on the recommendation of the school superintendent may not be necessary for an employee to enjoy all the rights and privileges of other employees who have been hired through regular procedures.

5. Findings - (a) One of the more recent areas of common law interest involved labor relations. Although public school classified employees were little disposed in the past to avail themselves of the services of the courts in this connection, within the past four or five years more cases began to appeal. In this area, the courts found the following principles to hold true:

a. School employees were found to be in violation of a state's constitutional injunction to provide for efficient public schools when their attempt at collective bargaining resulted in a

strike and picket lines around a school, thus impairing the efficiency with which the school could be operated.

b. One state department of education was found to have the authority to decide the legality of mass absence from work by employees of the schools in a certain district. This authority was expressly conferred by the statutes of the state and included the procedural machinery for hearing such cases and implementing the decisions.

c. A school board was found to be not an employer as that term was defined in a state's labor statutes. Thus the employees of a school district could not hold an election to determine a collective bargaining unit for all employees.

6. Conclusions - (c) On the basis of the above cases, the following conclusions appear to be warranted:

a. Since school districts are arms of the state, creatures of the legislature, and political subdivisions of the state, they do not have the freedom of authority with which to bargain collectively with employee organizations which wish to enter into such negotiations. Hence, they are exempt from laws which establish the machinery under which private employers must conduct such negotiations.

b. State departments may acquire the authority through action of the legislature to decide legal questions involving the legal work status of public school classified employees.

c. Actions of employee groups which impair the efficiency of the public schools may be in violation of state constitutional provisions concerning the efficient operation of those schools.

The lack of extensive litigation in the area of the legal work status of public school classified employees was an indication of the lack of knowledge concerning that status by the people involved. It was considered reasonable to expect the volume of such cases to increase in the future as more knowledge of that legal work status became increasingly widespread.

BIBLIOGRAPHY

There were 204 references listed in the final report.